

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JERRY O. GILBERT, SR.,

Plaintiff,

v.

ADVANCED CALL CENTER
TECHNOLOGIES, LLC,

Defendant.

CIVIL COMPLAINT

CASE NO. 1:18-cv-00720

DEMAND FOR JURY TRIAL

COMPLAINT

NOW comes JERRY O. GILBERT, SR. (“Plaintiff”), by and through his attorneys, Sulaiman Law Group, Ltd. (“Sulaiman”), complaining as to the conduct of ADVANCED CALL CENTER TECHNOLOGIES, LLC (“Defendant”), as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action for damages pursuant to the Fair Debt Collection Practices Act (“FDCPA”) under 15 U.S.C. §1692 *et seq.*, the Telephone Consumer Protection Act (“TCPA”) under 47 U.S.C. §227 *et seq.*, and the Michigan Occupational Code (“MOC”) under M.C.L. §339.901 *et seq.* for Defendant’s unlawful conduct.

JURISDICTION AND VENUE

2. This action arises under and is brought pursuant to the FDCPA and TCPA. Subject matter jurisdiction is conferred upon this Court by 15 U.S.C §1692, 47 U.S.C §227, 28 U.S.C. §§1331 and 1337, as the action arises under the laws of the United States. Supplemental jurisdiction exists for the state law claim pursuant to 28 U.S.C. §1367.

3. Venue is proper in this Court pursuant to 28 U.S.C. §1391 as Defendant conducts business in the Western District of Michigan and a substantial portion the events or omissions giving rise to the claims occurred within the Western District of Michigan.

PARTIES

4. Plaintiff is a 65-year-old natural person residing in Benton Harbor, Michigan, which is located within the Western District of Michigan.

5. Plaintiff is a “person,” as defined by 47 U.S.C. §153(39).

6. Defendant is a third-party collection agency that is in the business of collecting consumer debts on behalf of others, including debt allegedly owed by Plaintiff. Defendant’s principal place of business is located at 1235 Westlakes Drive, Suite 160, Berwyn, Pennsylvania. Defendant regularly collects upon consumers located in the state of Michigan.

7. Defendant is a “person” as defined by 47 U.S.C. §153(39).

8. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives and insurers at all times relevant to the instant action.

FACTS SUPPORTING CAUSES OF ACTION

9. The instant action arises out of Defendant’s attempts to collect upon defaulted JCPenney Credit Card payments (“subject debt”) said to be owed by Plaintiff to Synchrony Bank.

10. In early 2018, Plaintiff began receiving calls to his cellular phone, (231) XXX-4452, from Defendant.

11. At all times relevant to the instant action, Plaintiff was the sole subscriber, owner, and operator of the cellular phone ending in -4452. Plaintiff is and always has been financially responsible for the cellular phone and its services.

12. Defendant has used a variety of phone numbers when placing calls to Plaintiff's cellular phone, including but not limited to: (866) 268-8605, (866) 445-6548, (866) 534-3753, (866) 312-8374, (866) 445-6538, (877) 320-9563, and (877) 597-1385.

13. Upon information and belief, the aforementioned phone numbers are regularly utilized by Defendant during its debt collection activity.

14. Upon answering phone calls from Defendant, Plaintiff has experienced a significant pause, lasting several seconds in length, before he is connected with a live representative.

15. Upon speaking with Defendant's representatives, Plaintiff is informed that Defendant is seeking to collect upon the subject debt.

16. Plaintiff informed Defendant that, due to his financial hardship, he was unable to pay the subject debt and demanded that Defendant cease calling.

17. Despite Plaintiff's demands, Defendant has continued to call Plaintiff's cellular phone in an attempt to collect upon the subject debt up until the date of the filing of the instant action.

18. Defendant has, on countless occasions, placed multiple phone calls to Plaintiff's cellular phone on the same day, even after being told to stop calling.

19. For example, from April 9, 2018 through May 21, 2018, Defendant placed not less than 103 phone calls to Plaintiff cellular phone, including placing at least five calls per day during that stretch.

20. Plaintiff has received not less than 200 phone calls from Defendant since asking it to stop calling.

21. Moreover, on or around February 27, 2018, Plaintiff received a collection letter from Defendant, attempting to collect upon the subject debt.

22. Within this letter, Defendant states that, “Synchrony Bank may continue to add interest and fees as provided in your agreement.”

23. Plaintiff was startled by this language, as additional fees were not provided for in the agreement with Synchrony Bank.

24. Frustrated over Defendant’s conduct, Plaintiff spoke with Sulaiman regarding his rights, resulting in expenses.

25. Plaintiff has been unfairly and unnecessarily harassed by Defendant's actions.

26. Plaintiff has suffered concrete harm as a result of Defendant’s actions, including but not limited to, invasion of privacy, aggravation that accompanies collection telephone calls, emotional distress, increased risk of personal injury resulting from the distraction caused by the never-ending calls, increased usage of his telephone services, loss of cellular phone capacity, diminished cellular phone functionality, decreased battery life on his cellular phone, and diminished space for data storage on his cellular phone.

COUNT I – VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

27. Plaintiff repeats and realleges paragraphs 1 through 26 as though full set forth herein.

28. Plaintiff is a “consumer” as defined by 15 U.S.C. §1692a(3) of the FDCPA.

29. Defendant is a “debt collector” as defined by §1692a(6) of the FDCPA, because it regularly use the mail and/or the telephone to collect, or attempt to collect, delinquent consumer accounts.

30. Defendant is engaged in the business of collecting or attempting to collect, directly or indirectly, defaulted debts owed or due or asserted to be owed or due to others. Defendant identifies itself as a debt collector and has been a member of the Association of Credit and Collection Professionals (“ACA”) since 2001.¹

¹ <http://www.acainternational.org/search#memberdirectory>

31. The subject debt is a “debt” as defined by FDCPA §1692a(5) as it arises out of a transaction due or asserted to be owed or due to another for personal, family, or household purposes.

a. Violations of FDCPA §1692c(a)(1) and §1692d

32. The FDCPA, pursuant to 15 U.S.C. §1692d, prohibits a debt collector from engaging “in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt.” §1692d(5) further prohibits, “causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.”

33. Defendant violated §1692c(a)(1), d, and d(5) when it continuously called Plaintiff after being notified to stop. Defendant called Plaintiff at least 200 times after he demanded that it stop. This repeated behavior of systematically calling Plaintiff’s phone in spite of Plaintiff’s demands was harassing and abusive. The frequency and volume of calls shows that Defendant willfully ignored Plaintiff’s pleas with the goal of annoying and harassing him.

34. Defendant was notified by Plaintiff that its calls were not welcomed. As such, Defendant knew that its conduct in placing the calls was inconvenient and harassing to him.

b. Violations of FDCPA §1692e

35. The FDCPA, pursuant to 15 U.S.C. §1692e, prohibits a debt collector from using “any false, deceptive, or misleading representation or means in connection with the collection of any debt.”

36. In addition, this section enumerates specific violations, such as:

“The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.” 15 U.S.C. §1692e(10).

37. Defendant violated §1692e and e(10) when it used deceptive means to collect and/or attempt to collect the subject debt. In spite of the fact that Plaintiff told Defendant he could not

make payment, and demanded that it stop contacting him, Defendant continued to ceaselessly contact Plaintiff via automated calls. Instead of putting an end to this harassing behavior, Defendant systematically placed mass phone calls to Plaintiff's cellular phone in a deceptive attempt to force Plaintiff to answer its calls and ultimately make a payment. Through its conduct, Defendant misleadingly represented to Plaintiff that it had the legal ability to contact him via an automated system when it no longer had consent to do so.

38. Defendant also violated § 1692e, e(2), and e(10) through the inclusion of the portion of the collection letter which outlined additional fees that could be added to the subject debt. Specifically, by including the reference to “interest and fees” which may be added to the subject debt, Defendant misrepresented the extent of the charges that may properly be added to the subject debt. An unsophisticated consumer would be confused as to whether any “fees” could be imposed above and beyond those which the collection letter had already itemized. By utilizing this misleading and deceptive language, Defendant intended to instill a false sense of urgency in Plaintiff to address the subject debt, lest any “fees” be added above and beyond those which have already been added to the subject debt.

c. Violations of FDCPA §1692f

39. The FDCPA, pursuant to 15 U.S.C. §1692f, prohibits a debt collector from using “unfair or unconscionable means to collect or attempt to collect any debt.”

40. Defendant violated §1692f when it unfairly and unconscionably attempted to collect on a debt by continuously calling Plaintiff over 200 times after being notified to stop. Attempting to coerce Plaintiff into payment by placing voluminous phone calls without his permission is unfair and unconscionable behavior. These means employed by Defendant only served to worry and confuse Plaintiff.

41. Defendant further violated 15 U.S.C. §§ 1692f and f(1) through its reference to the “fees” that may be added to the subject debt in the event Plaintiff did not make payments. In addition to unfairly instilling a false sense of urgency in Plaintiff to address the subject debt, the inclusion of these references suggests that other costs or charges would be properly collectible. However, such a broad and categorical addition of “fees” was not authorized by the agreement creating the subject debt.

42. As pled in paragraphs 23 through 26, Plaintiff has been harmed and suffered damages as a result of Defendant’s illegal actions.

WHEREFORE, Plaintiff, JERRY O. GILBERT, SR., respectfully requests that this Honorable Court enter judgment in his favor as follows:

- a. Declaring that the practices complained of herein are unlawful and violate the aforementioned bodies of law;
- b. Awarding Plaintiff statutory damages of \$1,000.00 as provided under 15 U.S.C. §1692k(a)(2)(A);
- c. Awarding Plaintiff actual damages, in an amount to be determined at trial, as provided under 15 U.S.C. §1692k(a)(1);
- d. Awarding Plaintiff costs and reasonable attorney fees as provided under 15 U.S.C. §1692k(a)(3); and
- e. Awarding any other relief as this Honorable Court deems just and appropriate.

COUNT II – VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT

43. Plaintiff repeats and realleges paragraphs 1 through 42 as though fully set forth herein.

44. The TCPA, pursuant to 47 U.S.C. § 227(b)(1)(iii), prohibits calling persons on their cellular phone using an automatic telephone dialing system (“ATDS”) without their consent. The TCPA, under 47 U.S.C. § 227(a)(1), defines an ATDS as “equipment which has the capacity...to

store or produce telephone numbers to be called, using a random or sequential number generator; and to dial such numbers.”

45. Defendant used an ATDS in connection with its communications directed towards Plaintiff’s cellular phone. The significant pause, lasting several seconds in length, which Plaintiff experiences during answered calls from Defendant is instructive that an ATDS is being utilized to generate the phone calls. Moreover, the nature and frequency of Defendant’s contacts points to the involvement of an ATDS.

46. Defendant violated the TCPA by placing at least 200 phone calls to Plaintiff’s cellular phone using an ATDS without his consent. Any consent that Plaintiff *may* have given to the originator of the consumer debt, which Defendant will likely assert transferred down, was specifically revoked by Plaintiff’s demands that it cease contacting him.

47. The calls placed by Defendant to Plaintiff were regarding collection activity and not for emergency purposes as defined by the TCPA under 47 U.S.C. §227(b)(1)(A)(i).

48. Under the TCPA, pursuant to 47 U.S.C. § 227(b)(3)(B), Defendant is liable to Plaintiff for at least \$500.00 per call. Moreover, Defendant’s willful and knowing violations of the TCPA should trigger this Honorable Court’s ability to triple the damages to which Plaintiff is otherwise entitled to under 47 U.S.C. § 227(b)(3)(C). Defendant willfully violated the TCPA. Armed with the knowledge that Plaintiff did not consent to receive calls to his cellular phone, Defendant continued its incessant and relentless campaign of collection calls, including placing upwards of five calls per day.

WHEREFORE, Plaintiff, JERRY O. GILBERT, SR., respectfully requests that this Honorable Court enter judgment in his favor as follows:

- a. Declaring that the practices complained of herein are unlawful and violate the aforementioned statutes and regulations;

- b. Awarding Plaintiff damages of at least \$500.00 per phone call and treble damages pursuant to 47 U.S.C. §§ 227(b)(3)(B)&(C);
- c. Awarding Plaintiff costs and reasonable attorney fees; and
- d. Awarding any other relief as this Honorable Court deems just and appropriate.

COUNT III – VIOLATIONS OF THE MICHIGAN OCCUPATIONAL CODE

49. Plaintiff restates and realleges paragraphs 1 through 48 as though fully set forth herein.

50. Plaintiff is a “consumer” or “debtor” as defined by M.C.L. § 339.901(f).

51. Defendant is a “collection agency” as defined by M.C.L. § 339.901(b) as it is a person that is directly engaged in collecting or attempting to collect a claim owed or due or asserted to be owed or due another.

52. The subject debt is a “[c]laim” or “debt” as defined by M.C.L. § 339.901(a) as it is an obligation or alleged obligation for the payment of money or thing of value arising out of an agreement or contract for a purchase made primarily for personal, family, or household purposes.

a. Violations of M.C.L. § 339.915(f)(ii)

53. The MOC, pursuant to M.C.L. § 339.915(f)(ii) prohibits a collection agency from “[m]isrepresenting in a communication with a debtor . . . [t]he legal rights of the creditor or debtor.”

54. Defendant violated M.C.L. § 339.915(f)(ii) by repeatedly contacting Plaintiff’s cellular phone using an automated system absent consent. Through its conduct, Defendant misrepresented that it had the legal ability to contact Plaintiff using an automated system after Plaintiff demanded that Defendant stop calling. As such, Defendant misrepresented its legal rights, as well as Plaintiff’s legal rights, by continuing to contact Plaintiff’s cellular phone absent the lawful ability to do so.

55. Defendant further violated § 339.915(f)(ii) by stating that it could add additional fees to the underlying balance. Defendant did not have the right to add these fees, as they were not provided for under the agreement between Plaintiff and Synchrony Bank. Defendant included this language in an attempt to coerce Plaintiff into making payment.

b. Violations of M.C.L. § 339.915(n)

56. The MOC, pursuant to M.C.L. § 339.915(n), prohibits a collection agency from “[u]sing a harassing, oppressive, or abusive method to collect a debt, including causing a telephone to ring or engaging a person in telephone conversation repeatedly, continuously, or at unusual times or places which are known to be inconvenient to the debtor.”

57. Defendant violated the MOC when it continued to call Plaintiff’s cellular phone at least 200 times after he notified it to stop calling. The placing of 200 calls, including 103 calls just over a one-month period where calls were placed upwards of five times per day, is undoubtedly a harassing, oppressive, and abusive method to collect a debt by causing Plaintiff’s telephone to ring repeatedly and continuously. The repeated and continuous contacts were made with the hope that Plaintiff would succumb to the harassing behavior and ultimately make a payment. Even if Plaintiff had never told Defendant to stop calling, the placing of 103 phone calls just over a one-month stretch constitutes the causing of a telephone to ring repeatedly and continuously. The nature and volume of phone calls, including multiple phone calls per day, would naturally cause an individual to feel oppressed.

58. Further, Plaintiff told Defendant that its calls to his cellular phone were not welcome and were therefore inconvenient. Nevertheless, Defendant continued to place hundreds of calls to Plaintiff’s cellular phone. As such, Defendant contacted Plaintiff at times and places which were known to be inconvenient to him.

c. Violations of M.C.L. § 339.915(q)

59. The MOC, pursuant to M.C.L. § 339.915(q), subjects collection agencies to liability for “[f]ailing to implement a procedure designed to prevent a violation by an employee.”

60. Defendant violated the MOC by failing to adequately have procedures in place designed to prevent a violation by its employee(s). Plaintiff demanded that Defendant stop calling, yet the calls continued. In and of itself, the fact that such an incessant volume of phone calls were placed demonstrates Defendant’s lack of procedures in place designed to prevent a violation of the MOC. Additionally, the fact such an incessant volume of calls was allowed to continue after becoming aware that its calls were not welcome further highlights Defendant’s lack of procedural safeguard. As such, Defendant has failed to implement procedures designed to prevent its employees from engaging in harassing, oppressive, or abusive methods in connection with its collection of debts.

WHEREFORE, Plaintiff, JERRY O. GILBERT, SR., respectfully requests that this Honorable Court enter judgment in his favor as follows:

- a. Declaring that the practices complained of herein are unlawful and violate the aforementioned statutes and regulations;
- b. Entitling Plaintiff to injunctive relief, pursuant to M.C.L. § 339.916(1).
- c. Awarding Plaintiff actual damages, including treble damages, pursuant to M.C.L. § 339.916(2).
- d. Awarding statutory damages of at least \$50.00, including treble damages, pursuant to M.C.L. § 339.916(2).
- e. Awarding Plaintiff costs and reasonable attorney fees, pursuant to M.C.L. § 339.916(2).
- f. Awarding any other relief as this Honorable Court deems just and appropriate.

Dated: June 28, 2018

Respectfully submitted,

s/ Ahmad T. Sulaiman

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